

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Tessa Yesselman	Team: Squad #4	CCRB Case #: 201810238	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Wednesday, 11/28/2018 10:33 AM	Location of Incident: § 87(2)(b)	Precinct: 108	18 Mo. SOL 5/28/2020	EO SOL 1/12/2021	
Date/Time CV Reported Fri, 11/30/2018 7:27 PM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Mon, 12/10/2018 11:07 AM		

Complainant/Victim	Type	Home Address
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

Witness(es)	Home Address
§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)

Subject Officer(s)	Shield	TaxID	Command
1. POM Andrew Ali	12217	957324	108 PCT
2. POM Jose Genao	03514	949016	108 PCT
3. LT Keith Hum	00000	935034	E S U
4. An officer			

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. LT Alfonso Villacres	00000	943928	M E L D
2. POF Sheena Hubbard	17086	952863	108 PCT
3. POM Matthew Rousseau	15196	964264	108 PCT
4. DTS Paul McCartney	04238	938977	E S U

Officer(s)	Allegation	Investigator Recommendation
A.POM Jose Genao	Abuse: Police Officer Jose Genao refused to provide his name to § 87(2)(b)	§ 87(2)(b)
B.POM Jose Genao	Abuse: Police Officer Jose Genao refused to provide his shield number to § 87(2)(b)	§ 87(2)(b)
C. An officer	Abuse: An officer damaged § 87(2)(b)'s property.	§ 87(2)(b)
D.POM Andrew Ali	Abuse: Police Officer Andrew Ali forcibly removed § 87(2)(b) to the hospital.	§ 87(2)(b)
E.POM Jose Genao	Abuse: Police Officer Jose Genao forcibly removed § 87(2)(b) to the hospital.	§ 87(2)(b)
F.LT Keith Hum	Abuse: Lieutenant Keith Hum entered § 87(2)(b) in Queens.	§ 87(2)(b)

Case Summary

On November 30, 2018, § 87(2)(b) filed this complaint with IAB (log 2018-47395) (**01 Board Review**). On December 10, 2018, the CCRB received this complaint.

On November 28, 2018, at approximately 10:33 a.m., § 87(2)(b) and his home healthcare aide, § 87(2)(b) were in his home located at § 87(2)(b) § 87(2)(b), in Queens. § 87(2)(b)'s state appointed guardian, § 87(2)(b) § 87(2)(b) requested that police respond to § 87(2)(b) § 87(2)(b)'s residence after § 87(2)(b) refused to grant her entry. Police Officer's Jose Genao, Andrew Ali, Sheena Hubbard, and Matthew Rousseau, and Lieutenant Alfonso Villacres from the 108th Precinct responded. § 87(2)(b) continued to deny the officers entry into his residence. Detective Paul McCartney and Lieutenant Keith Hum from the Emergency Service Unit (ESU) also responded to the location. Through the door, § 87(2)(b) asked unidentified officers for their names and shield numbers, and PO Genao did not respond (**Allegation A and Allegation B: Abuse of Authority**, § 87(2)(g)). An unidentified officer removed the peephole from § 87(2)(b)'s front door (**Allegation C: Abuse of Authority**, § 87(2)(g)). § 87(2)(b) opened the door and PO Genao and PO Ali removed § 87(2)(b) to the hospital (**Allegation D and Allegation E: Abuse of Authority**, § 87(2)(g)). Lt. Hum entered § 87(2)(b)'s residence after § 87(2)(b) was removed to the hospital (**Allegation F: Abuse of Authority**, § 87(2)(g)).

No arrests were made or summons issued as a result of this incident.

The CCRB obtained body-worn camera footage of this incident (**04 Board Review, 05 Board Review**).

Findings and Recommendations

Allegation (A) Abuse of Authority: Police Officer Jose Genao refused to provide his name to

§ 87(2)(b)

Allegation (B) Abuse of Authority: Police Officer Jose Genao refused to provide his shield number to § 87(2)(b)

§ 87(2)(b) (**03 Board Review**) stated that after he denied § 87(2)(b) entry into his home, she called 911. The "entire" 108th Precinct responded to her call. Multiple officers knocked on § 87(2)(b)'s door and asked him to open the door. § 87(2)(b) said that they could not come inside and asked the officers for their names and shield numbers. The officers did not respond. § 87(2)(b) could not see the officers whose names and shield numbers he requested, so he could not provide a description of the officers.

§ 87(2)(b) (**02 Board Review**) did not hear § 87(2)(b) request names and shield numbers from officers, nor did she hear any officer refuse to provide the information.

At 27:32 of PO Genao's body-worn camera footage (**05 Board Review**), PO Genao walks into the apartment building. There is a group of officers standing outside of § 87(2)(b)'s door. At 27:45 all of the officers leave the building except for PO Genao. PO Genao walks in front of

§ 87(2)(b)'s door. At 27:51 PO Genao turns around. Three officers are standing in the vestibule of the apartment building. At 27:55 § 87(2)(b) says, "I just want badge numbers... And names, because Internal Affairs is going to get it." At 31:07 PO Genao walks away from § 87(2)(b)'s door and to the vestibule.

PO Genao (07 Board Review) initially stated that § 87(2)(b) did not ask for his name or shield through the door. After viewing the above referenced footage, PO Genao stated that he heard § 87(2)(b) request his name and shield in the footage but did not recall hearing the request during the incident. PO Genao thought that because multiple officers had been at § 87(2)(b)'s door, he could have been speaking to anyone, so he did not respond to him.

Patrol Guide Procedure 203-09 (13 Board Review) states that officers must "courteously provide [their] rank, name, shield number, and command, or otherwise provide them, to anyone who requests [them] to do so. Allow the person ample time to note this information."

§ 87(2)(g)

Allegation (C) Abuse of Authority: An officer damaged § 87(2)(b)'s property.

It is undisputed that § 87(2)(b) denied § 87(2)(b) his state appointed guardian, entry into his home, and that she called 911 as a result. It is also undisputed that § 87(2)(b) continued to refuse to open his door when the police arrived, and that he instructed § 87(2)(b) his home health aide, not to open the door. Lastly, it is undisputed that an FDNY lieutenant told NYPD officers at the location that § 87(2)(b) had to be removed to the hospital because a doctor had deemed § 87(2)(b) incapacitated.

§ 87(2)(b) (03 Board Review) stated that an officer removed the peephole from his door. § 87(2)(b) did not know which officer did this.

Lt. Hum (06 Board Review) stated that he saw that the peephole on § 87(2)(b)'s door had been removed but he did not know who had taken that action. Lt. Hum stated that the peephole was removed because § 87(2)(b) refused to open the door and the officers wanted to assess whether § 87(2)(b) was barricaded inside and whether anyone was hurt inside.

PO Genao (07 Board Review) did not recall if the peephole was removed from § 87(2)(b)'s door.

Body-worn camera footage does not show when the peephole was removed.

Officers may remove an apartment's peephole to assess a situation visually if the totality of information possessed by the police, including developing circumstances, warrants a reasonable belief that there is an emergency occurring inside of the apartment (People v. Guzman, 746 N.Y.S.2d 481) (09 Board Review).

§ 87(2)(g)

Allegation (D) Abuse of Authority: Police Officer Andrew Ali forcibly removed § 87(2)(b) to the hospital.

Allegation (E) Abuse of Authority: Police Officer Jose Genao forcibly removed § 87(2)(b) to the hospital.

As discussed above, it is undisputed that § 87(2)(b) § 87(2)(b) s state appointed guardian, called 911 after § 87(2)(b) refused her entry into his home. It is also undisputed that § 87(2)(b) denied the responding police entry into his home and did not allow his home health aide, § 87(2)(b) to open the door. It is further undisputed that FDNY personnel at the location informed police personnel that § 87(2)(b) had been declared incapacitated by a doctor and needed to be removed to the hospital.

§ 87(2)(b) **(03 Board Review)** stated that after § 87(2)(b) opened the door, he was placed on a stretcher and PO Ali and PO Genao escorted him to the ambulance, where he was removed to the hospital.

§ 87(2)(b) **(02 Board Review)** did not know why the police were at the location, but thought that it was because of an ongoing dispute between § 87(2)(b) and his landlord about repairs in the apartment.

At 40:00 on PO Ali's body worn camera footage **(04 Board Review)**, an EMT lieutenant is pictured speaking with § 87(2)(b). At 40:40 § 87(2)(b) tells the EMT lieutenant that she wants § 87(2)(b) to be removed to the hospital. At 43:00 the EMT's say that the EMT lieutenant is on the phone with a doctor. At 46:45 the EMT lieutenant reads from the court order while he is on the telephone and states that the guardian can have § 87(2)(b) removed to the hospital when she deems it necessary. At 47:45 the EMT lieutenant states that the doctor said § 87(2)(b) needs to go to the hospital.

The ESU report **(14 Board Review)** states that § 87(2)(b) presented officers with proof of guardianship and with signed court order index § 87(2)(b), and that § 87(2)(b) was removed to § 87(2)(b). The Aided report **(16 Board Review)** generated regarding this incident states that § 87(2)(b) has schizophrenia and was removed to the hospital for a medical evaluation and high blood pressure.

As per Patrol Guide Procedure 216-01 **(15 Board Review)**: members of service shall cooperate with ambulance and hospital personnel in every reasonable manner.

§ 87(2)(g)

§ 87(2)(g)

Allegation (F) Abuse of Authority: Lieutenant Keith Hum entered § 87(2)(b) in Queens.

§ 87(2)(b) **(03 Board Review)** stated that after § 87(2)(b) opened the door, an officer approached him and walked him into the hallway. § 87(2)(b) did not know which officer this was and could not provide a description of him. § 87(2)(b) stated that after he was in the hallway he saw “Detective Mulligan” enter his apartment and search the hallway closet and walk into the kitchen.

§ 87(2)(b) **(02 Board Review)** did not testify to seeing any officer enter or search the apartment.

Lt. Hum **(06 Board Review)** stated that after § 87(2)(b) was removed to the hospital, he entered the apartment. Lt. Hum did this because § 87(2)(b) had refused to open the door and had instructed § 87(2)(b) not to open the door, and he wanted to assure that there was nobody else being held inside or was hurt inside of the apartment. Lt. Hum walked down the hallway in the apartment and looked to make sure he did not see anyone. Lt. Hum did not open any closets or doors.

The courts have established that warrantless entries into private homes are considered unconstitutional. Exceptions to this rule include emergency situations, as established in People v. Dallas, 8 N.Y.3d 890, (2007) N.Y. Emergency situations require that police must have reasonable grounds to believe that there is an emergency at hand and an immediate need for their assistance for the protection of life or property **(08 Board Review)**. As per Maryland v. Buie, 494 U.S. 325, In doing a protective sweep, officers may only search those spaces where a person can conceivably hide **(10 Board Review)**.

§ 87(2)(g)

Civilian and Officer CCRB Histories

- § 87(2)(b) has been party to one previous CCRB complaint and has been named a victim in three allegations **(12 Board Review)**.
 - § 87(2)(b)

- PO Ali has been a member of service for five years and has been a subject in one previous CCRB complaint and two allegations, none of which were substantiated. § 87(2)(b) (g) .
- PO Genao has been a member of service for nine years and this is the first CCRB complaint to which he has been a subject.
- Lt. Hum has been a member of service for fifteen years and this is the first CCRB complaint to which he has been a subject.

Mediation, Civil and Criminal Histories

- This case was not suitable for mediation.
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]
- As of February 11, 2020, the New York City Office of the Comptroller has no record of a Notice of Claim being filed regarding this complaint (**17 Board Review**).

Squad No.: _____

Investigator: _____

Signature	Print Title & Name	Date
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Squad Leader: _____

Signature	Print Title & Name	Date
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Reviewer: _____

Signature	Print Title & Name	Date
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